

STATE OF MICHIGAN
COURT OF APPEALS

AMY CHARRON and THOMAS CHARRON,

Plaintiffs-Appellants/Cross-
Appellees,

v

H & H LANES, INC., d/b/a GALAXY LANES,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

May 6, 2008

No. 278277

Genesee Circuit Court

LC No. 06-084736-NO

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right, and defendant cross appeals, from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this premises liability action. The court concluded that there was a question of fact whether the hazard posed by water on defendant's restroom floor was open and obvious, but that defendant did not have constructive notice of the condition. We affirm. This appeal is being decided without oral argument under MCR 7.214(E).

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). We limit our review to the evidence that was presented to the trial court. *Id.*, p 126 n 9.

Plaintiffs' theory is that plaintiff Amy Charron slipped on some water on the restroom floor of defendant's bowling alley. Plaintiff¹ did not see any water on the floor, but other individuals who came to her aid after her fall observed water around a drain.

¹ Because plaintiff Thomas Charron's loss of consortium claim is derivative, the singular term "plaintiff" is used to refer to Amy Charron only.

In a premises liability action, a defendant storekeeper may be liable for an injury resulting from an unsafe condition either caused by its own active negligence or that of its employees or, if otherwise caused, the condition was known or should have been known to the storekeeper. *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001). Constructive notice of a condition can be inferred from evidence that the condition “is of such a character or has existed a sufficient length of time that [the defendant] should have had knowledge of it.” *Id.* (citation and internal quotation marks omitted).

In this case, there was no evidence that defendant caused the hazardous condition, i.e., the accumulation of water on the restroom floor. Further, there was no direct evidence concerning how long the water had been on the floor before plaintiff’s fall. No one saw it beforehand. Plaintiff testified that she entered the restroom at approximately 11:45 p.m. Angela Beaudry, who testified that she was typically vigilant about looking for water on the restroom floor, stated that she did not recall seeing any water when she last used the restroom, which was from three to five minutes before plaintiff’s fall. Beaudry explained, however, that she was not looking at the floor as carefully during her last visit, because she had changed out of her bowling shoes by then and was in a hurry. Nevertheless, she also visited the restroom at approximately 11:20 or 11:30 p.m., and did not recall observing any water during that visit.

Plaintiffs did not provide any evidence indicating how long the water had been on the floor. The condition may have appeared immediately after Beaudry’s penultimate visit, moments before plaintiff entered the restroom, or at any time in between. Choosing one option over another would be a matter of speculation. The established facts do not provide a basis for inferring how long the condition existed, and mere conjecture does not establish a triable issue of fact. See *Whitmore v Sears, Roebuck & Co*, 89 Mich App 3, 8-10; 279 NW2d 318 (1979). Absent evidence from which it may be inferred that defendant had constructive notice of the condition, the trial court correctly granted summary disposition to defendant.

In light of our decision, it is unnecessary to address defendant’s argument on cross appeal.

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski